16-P-494 Appeals Court

MALDEN POLICE PATROLMAN'S ASSOCIATION vs. CITY OF MALDEN.

No. 16-P-494.

Middlesex. February 7, 2017. - August 11, 2017.

Present: Trainor, Blake, & Shin, JJ.

Practice, Civil, Motion to dismiss, Summary judgment. Superior Court. Rules of the Superior Court. Administrative Law, Primary jurisdiction, Exhaustion of remedies. Unjust Enrichment. Contract, Collective bargaining contract, Unjust enrichment, Promissory estoppel. Public Employment, Collective bargaining. Police, Collective bargaining. Massachusetts Wage Act. Civil Service, Collective bargaining, Municipal finance. Municipal Corporations, Collective bargaining, Municipal finance.

Civil action commenced in the Superior Court Department on January 21, 2015.

The case was heard by Bruce R. Henry, J., on motions to dismiss and for summary judgment.

Christopher G. Fallon for the plaintiff.
Albert R. Mason for the defendant.

BLAKE, J. The plaintiff, Malden Police Patrolman's Association (union), is a labor organization comprised of approximately seventy-nine police officers employed by the

defendant, the city of Malden (city). The union and the city were parties to a collective bargaining agreement (CBA) covering three fiscal years from July 1, 2010, through June 30, 2013. The CBA set forth the provisions governing, among other matters, paid detail work performed by the officers.[1] During the summer of 2014, the union notified the city that it was in arrears on the payment of compensation to officers for detail work, requested a written explanation for the nonpayment, and demanded the outstanding detail pay. The city took the position that, because the officers earned the detail pay for work performed for third parties, the city was exempt from the provisions of the Massachusetts wage and hour laws, requiring timely payment of earned wages.

On January 21, 2015, the union filed a complaint in the Superior Court against the city,[2] alleging that the city owed the

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[1] Only art. 23 of the CBA, governing "Paid Details," has been included in the record appendix. There are two types of paid details -- those performed for the city, and those performed for third-party vendors.

[2] On November 24, 2014, the union had filed a nonpayment of wage complaint with the Attorney General's office. See G. L. c. 149, § 150, as amended by St. 2014, c. 505, § 4. By letter dated January 9, 2015, the Attorney General's fair labor division authorized the union to pursue a private civil action. An aggrieved employee who prevails in such an action "shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees." Ibid. See Melia v. Zenhire, Inc., 462 Mass. 164, 171 n.8 (2012).

officers approximately $410,000 in compensation for the performance of past detail work.[3] The complaint requested relief under theories of breach of contract (count I), breach of an implied covenant of good faith and fair dealing (count II), promissory estoppel (count III), unjust enrichment (count IV), and violation of the Massachusetts Wage Act, G. L. c. 149, § 148 (Wage Act) (count V). The union then filed a motion for summary judgment pursuant to Mass.R.Civ.P. 56, 365 Mass. 824 (1974). The city moved to dismiss the union's complaint or, in the alternative, for summary judgment and declaratory judgment.

By memorandum of decision and order dated February 9, 2016, the judge denied the union's motion for summary judgment, allowed the city's motion to dismiss with respect to counts I through IV of the complaint, and granted summary judgment for the city with respect to count V of the complaint. First, the judge stated that the union's claims for breach of contract and breach of an implied covenant of good faith and fair dealing were governed by the CBA and, therefore, those claims were "best resolved by whatever dispute resolution provisions [were] contained in that agreement." While the record does not contain the entire CBA, neither party disputes that it contains an

[3] The record does not include any information regarding the nature of this detail work, or the time period over which it was performed. Neither party has alleged that the detail work related to anything other than the protection of public safety.

arbitration/grievance procedure. Next, the judge concluded that promissory estoppel was not a viable claim against the city. The judge also determined that the circumstances of the present dispute did not give rise to a claim of unjust enrichment. Finally, the judge concluded that, although detail pay constituted wages under G. L. c. 149, § 148, the union could not prevail under the Wage Act due to the provisions of the municipal finance law, G. L. c. 44, § 53C.[4] Following the entry of judgment, the union appealed. For the reasons that follow, we reverse the allowance of summary judgment in favor of the city on count V of the complaint, setting forth the union's Wage Act claim, and remand for further proceedings. In all other respects, we affirm.

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[4] General Laws c. 44, § 53C, as amended by St. 1982, c. 70, provides, in pertinent part, as follows: "All money received by a city . . . as compensation for work performed by one of its employees on an off-duty work detail which is related to such employee's regular employment or for special detail work performed by persons where such detail is not related to regular employment shall be deposited in the treasury and shall be kept in a fund separate from all other monies of such city . . . and . . . shall be expended without further appropriation in such manner and at such times as shall, in the discretion of the authority authorizing such off-duty work detail or special detail work, compensate the employee or person for such services; provided, however, that such compensation shall be paid to such employee or person no later than ten working days after receipt by the city . . . of payment for such services."

1. Compliance with Superior Court rules.[5] The union first contends that the judge erred in granting the city's motion to dismiss or, in the alternative, for summary judgment because the city failed to comply with Rules 9A and 9B of the Rules of the Superior Court (2014). In particular, the union asserts that the city failed to include with its motion either a separate statement of uncontested material facts with references to supporting materials, or a joint appendix with an index of exhibits. See Superior Court Rule 9A(b)(5)(i) and (vi). The union claims that the city, when notified of these deficiencies, did not correct them properly. In addition, the union points out that the city failed to include a certificate of service on the last page of its motion. See Superior Court Rule 9B. In the union's view, the city's motion was fatally defective because of these deficiencies and, therefore, should have either not been considered or been denied. We disagree.

We have said that "[r]ules of procedure are not just guidelines. Their purpose is to provide an orderly, predictable process by which parties to a law suit conduct their business. Any litigant who fails to turn a procedural corner squarely assumes the risk that the rules infraction will be used against

[5] Notwithstanding the fact that the union raised this issue in its memorandum of law in opposition to the city's motion to dismiss, the judge did not address it in his memorandum of decision and order.

him and the rule vigorously enforced by the trial judge." USTrust Co. v. Kennedy, 17 Mass. App. Ct. 131, 135 (1983). See Superior Court Rule 9A(b)(6) (judge "need not consider any motion or opposition that fails to comply with the requirements of this rule"). "Every violation of a procedural rule, however, need not -- and should not -- require the perpetrator to be undone. The defect may be harmless." USTrust Co. v. Kennedy, supra, and cases cited. Consequently, trial judges "have discretion to forgive a failure to comply with a rule if the failure does not affect the opposing party's opportunity to develop and prepare a response." Ibid. See Greenleaf v. Massachusetts Bay Transp. Authy., 22 Mass. App. Ct. 426, 429 (1986) (management of case committed to discretion of trial judge).

Here, the judge, in his discretion, chose to consider the merits of the city's motion, notwithstanding the city's alleged noncompliance with procedural rules. We note that in a revised memorandum of law accompanying its motion, the city did set forth agreed factual allegations taken directly from the paragraphs of the union's complaint. It also appears from the Superior Court docket that a statement of material facts was filed, although it has not been included in the record appendix. We agree with the union that the city failed to file a joint appendix with an index of exhibits and to include a certificate

of service on the last page of its motion. Nonetheless, the union has not claimed that the city's noncompliance with Rules 9A and 9B affected the union's ability to respond to the city's motion. Absent any prejudice to the union, we conclude that the judge did not abuse his discretion in considering the merits of the city's motion, rather than deeming it fatally defective.

2. Breach of contract and breach of implied covenant of good faith and fair dealing. Both parties have characterized the judge's dismissal of the contract-based claims as one under the doctrine of primary jurisdiction and have briefed the issue accordingly. The union contends that the judge erred in this respect because judicial resolution of such claims would not interfere with any pending administrative proceedings, and courts routinely resolve these types of controversies. In the union's view, its claims presented only questions of law for which the expertise of the Department of Labor Relations (department) was unnecessary. That being the case, the union argues, there was no reason for the judge to relinquish jurisdiction over its contract-based claims. We disagree.[6]

[6] The union also argues that the city waived any challenge to the court's jurisdiction by failing to raise the matter as an affirmative defense. The union's argument is unavailing because primary jurisdiction cannot be waived. See Everett v. 357 Corp., 453 Mass. 585, 609 (2009); Blauvelt v. AFSCME Council 93, Local 1703, 74 Mass. App. Ct. 794, 801 (2009). Even when not raised by the parties, the doctrine may be invoked by a court sua sponte. See Everett v. 357 Corp., supra.

Both the doctrine of primary jurisdiction and the doctrine of exhaustion of remedies serve the purpose of "promoting proper relationships between the courts and administrative agencies." Lincoln v. Personnel Administrator of the Dept. of Personnel Admin., 432 Mass. 208, 211 n.4 (2000), quoting from Nader v. Allegheny Airlines, Inc., 426 U.S. 290, 303 (1976) (Nader). The exhaustion doctrine, however, "is commonly applied to prevent premature interference with a pending administrative proceeding." J. & J. Enterprises, Inc. v. Martignetti, 369 Mass. 535, 539 (1976). It "contemplates a situation where some administrative action has begun, but has not yet been completed." Murphy v. Administrator of the Div. of Personnel Admin., 377 Mass. 217, 220 (1979) (Murphy). See Lumbermens Mut. Cas. Co. v. Workers' Compensation Trust Fund, 88 Mass. App. Ct. 183, 187 (2015). The exhaustion doctrine "preserve[s] the integrity of the administrative process while sparing the judiciary the burden of reviewing administrative proceedings in a piecemeal fashion." Murphy, supra.

Here, the city filed a charge of prohibited practice with the department on September 10, 2014, alleging that the union had violated G. L. c. 150E, § 10(b)(1), (2), and (3), by insisting that the method by which officers were paid for outside detail work was a mandatory subject of collective bargaining. An investigator with the department dismissed the

city's charge in its entirety, concluding that there was no probable cause to believe that the union had violated G. L. c. 150E in the manner alleged. There is nothing in the record before us to indicate that the union ever initiated proceedings before the department against the city. The judge's decision plainly suggests an unawareness of any pending administrative proceedings that would resolve the matters raised in the union's complaint. Accordingly, the judge does not appear to have dismissed the union's contract-based claims for failure to exhaust administrative remedies but could, potentially, have dismissed them as falling within the primary jurisdiction of the department.

"The doctrine of primary jurisdiction, like exhaustion [of administrative remedies], 'is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties.'" Murphy, 377 Mass. at 221, quoting from Nader, 426 U.S. at 303. It arises in cases "where a plaintiff, 'in the absence of pending administrative proceedings, invokes the original jurisdiction of a court to decide the merits of a controversy' that includes an issue within the special competence of an agency." Fernandes v. Attleboro Hous. Authy., 470 Mass. 117, 121 (2014) (Fernandes), quoting from Murphy, supra at 220. See Everett v. 357 Corp., 453 Mass. 585, 609 (2009) (Everett). The primary jurisdiction

doctrine allows a judge to delay or deny judicial review in favor of administrative proceedings "when an action raises a question of the validity of an agency practice, . . . or when the issue in litigation involves 'technical questions of fact uniquely within the expertise and experience of an agency'" (citations omitted). Murphy, supra at 221, quoting from Nader, supra at 304. See Leahy v. Local 1526, Am. Fedn. of State, County, & Mun. Employees, 399 Mass. 341, 349-350 (1987) (Leahy).

"Where an agency has statutorily been granted exclusive authority over a particular issue, the doctrine of primary jurisdiction requires that a court refer the issue to the agency for adjudication in the first instance" (emphasis in original). Fernandes, supra, quoting from Blauvelt v. AFSCME Council 93, Local 1703, 74 Mass. App. Ct. 794, 801 (2009) (Blauvelt). See Everett, supra; Puorro v. Commonwealth, 59 Mass. App. Ct. 61, 64 (2003) (Puorro). "Where, however, no statute has conferred exclusive authority to the agency, primary jurisdiction is 'a doctrine exercised in the discretion of the court.'" Blauvelt, supra at 801-802, quoting from Columbia Chiropractic Group, Inc. v. Trust Ins. Co., 430 Mass. 60, 62 (1999). See Everett, supra at 610 n.32. The primary jurisdiction doctrine has no applicability where the issues presented to the court concern only questions of law that do not call for agency expertise.

See Murphy, 377 Mass. at 221-222; Casey v. Massachusetts Elec. Co., 392 Mass. 876, 879-880 (1984).

"Labor relations is an area in which the concerns of primary jurisdiction are commonly implicated." Leahy, 399 Mass. at 346. General Laws c. 150E, the public employees collective bargaining statute, gives the department broad authority to resolve labor disputes. See id. at 347. Interpretation of the provisions of a collective bargaining agreement is a "traditional" function of the department, "as to which it possesses special expertise." Everett v. Local 1656, Intl. Assn. of Firefighters, 411 Mass. 361, 368 (1991).

In this case, although the parties characterized the issue as one of primary jurisdiction, the judge determined that the union's contract-based claims were governed by the terms of the CBA and were "best resolved by whatever dispute resolution provisions [were] contained in that agreement."[7] "Employees may not simply disregard the grievance procedures set out in a collective labor contract and go direct[ly] to court for redress against the employer." Balsavich v. Local Union 170 of the Intl. Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers, 371

[7] It appears from the judge's decision that he was unaware of the specific nature of the CBA's grievance procedures, presumably because the relevant portions of the CBA were not provided to him. Given that the CBA's grievance provisions are not part of the record on appeal, we are unable to ascertain how the parties agreed to resolve their labor disputes.

Mass. 283, 286 (1976). See School Comm. of Danvers v. Tyman, 372 Mass. 106, 115 (1977) (meaning of collective bargaining agreement to be determined by arbitrator, not court); O'Brien v. New England Tel. & Tel. Co., 422 Mass. 686, 695 (1996) (employees should pursue grievance procedure under collective bargaining agreement before resorting to judicial process). We note, however, that the CBA in this case expired on June 30, 2013, and the union does not seem to have provided the judge (or this court) with the basis for the parties' ongoing contractual relationship. The parties have given us little guidance on this issue, but we read their papers to suggest that there may have been a period of time when there was no CBA in place, during which the parties litigated whether payment for details was a mandatory or permissive subject of bargaining. If there was a CBA in effect, however, the judge correctly ruled that the union was required to follow the grievance procedures provided therein. Whether the dispute falls within the department's primary jurisdiction or whether the CBA provides for a different manner of dispute resolution, a distinction we cannot resolve on this record, we conclude that the judge properly dismissed the union's contract-based claims.[8]

[8] Even if the judge's decision should have been predicated on the doctrine of exhaustion of administrative remedies, the result is the same. See Leahy, 399 Mass. at 345 n.3; Puorro, 59 Mass. App. Ct. at 64.

3. Unjust enrichment. The union next argues that the judge erred in dismissing its unjust enrichment claim. We disagree. A plaintiff is not entitled to recovery on a theory of unjust enrichment where a valid contract defines the obligations of the parties. See Boston Med. Center Corp. v. Secretary of the Executive Office of Health & Human Servs., 463 Mass. 447, 467 (2012); York v. Zurich Scudder Invs., Inc., 66 Mass. App. Ct. 610, 619-620 (2006). See also Restatement (Third) of Restitution and Unjust Enrichment § 2(2) (2011) ("A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into unjust enrichment"). Because the CBA governs the terms of paid details performed by the officers, it precludes recovery by the union under a theory of unjust enrichment.

4. Promissory estoppel. The union contends that the judge erred in summarily dismissing its promissory estoppel claim. It argues that, under the terms of the CBA, the city promised to pay the officers for detail work at a specified rate and within a defined time period, and that this promise induced the officers to perform such work to their detriment. The union asserts that the city reneged on its promise, and that the ensuing injustice to the officers of working without compensation can only be remedied by enforcing the city's

promise. In the union's view, dismissal of its promissory estoppel claim was unwarranted. We disagree.

"Promissory estoppel is an equitable doctrine." Barrie-Chivian v. Lepler, 87 Mass. 683, 686 (2015). In the absence of a contract in fact, promissory estoppel implies a contract in law where there is proof of an unambiguous promise coupled with detrimental reliance by the promisee. See Rhode Island Hosp. Trust Natl. Bank v. Varadian, 419 Mass. 841, 848 (1995). See also Vickery v. Ritchie, 202 Mass. 247, 249 (1909) (absent express contract, "[t]he law implies an obligation to pay for what has been done"). Where an enforceable contract exists, however, a claim for promissory estoppel will not lie. See Brewster Wallcovering Co. v. Blue Mountain Wallcoverings, Inc., 68 Mass. App. Ct. 582, 594 n.33 (2007). See also Knowlton v. Swampscott, 280 Mass. 69, 72 (1932) ("A party cannot come into equity to secure relief open to him at law"). Given that there was a written contract between the union and the city (namely, the CBA), the doctrine of promissory estoppel is not applicable, and therefore, the judge did not err in dismissing the union's claim.

5. Wage Act claim. Finally, the union contends that the judge erred in granting summary judgment in favor of the city on the union's Wage Act claim. The union acknowledges that there is no case law governing the interplay between the Wage Act,

G. L. c. 149, § 148, and the municipal finance law, G. L. c. 44, § 53C. Nonetheless, the union asserts that the Wage Act is broad in scope and was designed to prevent precisely what has happened in this case -- nonpayment by the city of wages owed to the officers for their performance of detail work.[9]

"The purpose of the Wage Act is 'to prevent the unreasonable detention of wages.'" Melia v. Zenhire, Inc., 462 Mass. 164, 170 (2012), quoting from Boston Police Patrolmen's Assn. v. Boston, 435 Mass. 718, 720 (2002). See Crocker v. Townsend Oil Co., 464 Mass. 1, 13 (2012) (Wage Act intended "to provide strong statutory protection for employees and their right to wages"); Lipsitt v. Plaud, 466 Mass. 240, 245 (2013). General Laws c. 149, § 148, as amended by St. 1992, c. 133, § 502, directs "[e]very" employer to pay an employee "the wages earned" by that employee at regular intervals and within a fixed number of days after "the termination of the pay period during which the wages were earned." See Camara v. Attorney Gen., 458 Mass. 756, 759 (2011) (Wage Act requires "prompt and full payment of wages due"). When an employee "has completed the labor, service, or performance required of him, . . . he has

[9] Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. See Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991); Mass.R.Civ.P. 56, 365 Mass. 824 (1974). We review a decision to grant summary judgment de novo. See Ritter v. Massachusetts Cas. Ins. Co., 439 Mass. 214, 215 (2003).

'earned' his wage." Awuah v. Coverall N. America, Inc., 460 Mass. 484, 492 (2011), citing Black's Law Dictionary 584 (9th ed. 2009). It is well established "that municipalities are subject to the Wage Act." Plourde v. Police Dept. of Lawrence, 85 Mass. App. Ct. 178, 181 (2014), and cases cited.[10]

Here, the judge found that compensation earned by police officers for the performance of detail work for third parties constituted "wages" under G. L. c. 149, § 148. On this record, however, we are unable to conclude that such compensation, even if "wages," is paid to "employees" of the city.[11] Indeed, neither party addressed the three-part test set forth in G. L. c. 149, § 148B, to determine whether the union members, when

[10] We express no opinion whether detail pay is included in the average annual rate of regular compensation utilized to determine retirement benefits, and we note that neither party has raised this issue.

[11] In its complaint, the union did not allege that the city violated any provisions of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201-219 (2012), or related regulations. In its answer, however, the city asserted, in reliance on the FLSA, that detail pay earned by officers from third parties did not constitute wages earned from the city, thereby rendering the Wage Act inapplicable. There is no indication from the judge's decision that he considered the provisions of the FLSA, and the city has not raised the matter on appeal. Accordingly, we deem it waived. See Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975) (appellate court need not consider questions or issues not argued in brief).

performing police details, are "employees" of the city for purposes of the Wage Act.[12]

The judge then stated that the wage determination was not the end of his inquiry. Taking into consideration the language of G. L. c. 44, § 53C, the judge decided that the municipal finance law precluded the union from prevailing on its Wage Act claim. We agree in part. Specifically, we conclude that, where the detail work is performed for third parties, the plain language of G. L. c. 44, § 53C, governs with respect to detail pay.[13] But, to the extent that the city "hires" its own officers as "employees" to perform detail services within the meaning of G. L. c. 149, § 148B, payment is governed by the Wage Act. Although we reach these conclusions as a matter of statutory interpretation, we cannot resolve the union's claim on this

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[12] General Laws c. 149, § 148B, sets forth a three-part test to determine whether someone is an employee for purposes of the Wage Act. Specifically, an individual performing any service shall be considered to be an employee unless "(1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and (2) the service is performed outside the usual course of the business of the employer; and, (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed." G. L. c. 149, § 148B(a), as amended by St. 2004, c. 193, § 26.

[13] In circumstances where G. L. c. 44, § 53C, is applicable, there may be provisions of the Wage Act that do not conflict with § 53C such that the two statutes should be construed and applied harmoniously. Because the union has not raised this argument, we do not consider it.

record because of two unknown factual matters: (1) what portion of the detail work at issue was performed for third parties, rather than for the city, and (2) with respect to detail work performed for third parties, whether the city complied with the requirements of the municipal finance law. A remand is therefore necessary to determine whether the city violated either statute and, if so, what damages are warranted, if any.

"A fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." Sullivan v. Brookline, 435 Mass. 353, 360 (2001). We assume that the Legislature is aware of existing statutes, such as G. L. c. 149, § 148, when it enacts a new one, such as G. L. c. 44, § 53C. See Charland v. Muzi Motors, Inc., 417 Mass. 580, 582 (1994). Moreover, "the Legislature is presumed to intend and understand all the consequences of its actions." Alves's Case, 451 Mass. 171, 179-180 (2008). "[W]here two or more statutes relate to the same subject matter, they should be construed together so as to constitute a harmonious whole consistent with the legislative purpose." Board of Educ. v. Assessor of Worcester, 368 Mass. 511, 513-514 (1975). See, e.g., Commonwealth v. Kelly, 470 Mass. 682, 691-692 (2015) (harmonizing G. L. c. 265, § 37, and G. L. c. 265, § 39, as related parts of broad statutory scheme

to criminalize violations of individual's civil rights); McLaughlin v. Lowell, 84 Mass. App. Ct. 45, 65-66 (2013) (harmonizing G. L. c. 32, § 8, governing reinstatement of public employees who retired because of disability, and G. L. c. 151B, § 4[16], prohibiting employment discrimination on basis of handicap). See also George v. National Water Main Cleaning Co., 477 Mass. 371, 378 (2017) (where two statutes appear to be in conflict, court does not mechanically determine that more recent or specific statute controls but, rather, attempts "to harmonize the two statutes so" underlying policies of both may be given effect).

Where the Wage Act, St. 1879, c. 128, is a broad remedial statute designed to protect employees from the prolonged detention of earned wages, see Fernandes, 470 Mass. at 125-126, the municipal finance law, St. 1970, c. 344, specifically pertains to the timely payment of compensation for detail work. Pursuant to the Wage Act, an employer shall pay wages to an employee within six or seven days of the termination of the pay period during which such wages were earned by the employee. See G. L. c. 149, § 148. In contrast, the municipal finance law states, in relevant part, that "[a]ll money received by a city . . . as compensation for work performed by one of its employees on an off-duty work detail which is related to such employee's regular employment . . . shall be paid to such employee . . . no

later than ten working days after receipt by the city . . . of payment for such services."[14,15] G. L. c. 44, § 53C. We construe this plain statutory language to apply, both with respect to the timing and disbursement of the payments, to detail work performed for third parties, not for the city itself.

The fact that the municipal finance law provides that compensation for off-duty detail work shall be paid to an employee "no later than ten working days after receipt by the city," G. L. c. 44, § 53C, does not render this statute incompatible with the Wage Act. The more recent and more specific language of the municipal finance law signals an awareness by the Legislature that when compensation for detail work is coming from a third party, a city's prompt payment of wages to officers who have performed such work may be delayed. See TBI, Inc. v. Board of Health of N. Andover, 431 Mass. 9, 18 (2000). See also Risk Mgmt. Foundation of the Harvard Med. Insts., Inc. v. Commissioner of Ins., 407 Mass. 498, 505 (1990).

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[14] General Laws c. 44, § 53C, also provides that money received by a city as compensation for "special detail work performed by persons where such detail is not related to regular employment shall be . . . paid to such . . . person no later than ten working days after receipt by the city . . . of payment for such services."

[15] Under G. L. c. 44, § 53C, a city is permitted to impose a fee of up to ten percent of the cost of authorized services on entities requesting private detail work. "Any such fee received shall be credited as general funds of the city." Ibid.

Consequently, the Legislature has afforded a city more time to pay its employees compensation for detail work than would be permissible with respect to the payment of regular wages that come directly from the city. We do not preclude the possibility, as the union argues, that the city "contracted away any rights to withhold the detail pay wages that it may have had under G. L. c. 44, § 53C." Recognizing that payment from third parties for detail work might not always be forthcoming in a timely manner, the city agreed in art. 23 of the CBA "to fund and maintain a separate budgetary line item in the police budget each July 1 in the amount of $100,000. This amount of money [would] be used to timely pay a patrolman for details performed in the event a vendor [did] not pay within fourteen (14) days of the detail being performed." Further, the city and the union agreed that "accounts receivable for details shall be used to offset such funding after officers have been paid for detail service." The city plainly was aware that it had a legal obligation to ensure the prompt payment of compensation to its police officers who had performed detail work. The CBA serves to ameliorate any harm to officers that may arise from a third party's late payment by directing the city to pay officers for completed detail work if payment from the third party is not forthcoming within fourteen days of the detail being performed.

This directive is properly based on the expectation that the city subsequently will be reimbursed by the third party.

Here, the record is devoid of the particulars of the unpaid details and the consumption of the $100,000 budgetary line amount set forth in the CBA. Accordingly, a remand is necessary to allow the parties to further develop the record in order to determine whether the city violated the Wage Act or the municipal finance law.

6. Conclusion. We affirm the judgment of dismissal with respect to counts I, II, III, and IV of the union's complaint. We reverse the entry of summary judgment in favor of the city on count V of the complaint, setting forth the union's Wage Act claim, and remand the matter to the Superior Court for further proceedings consistent with this opinion.

So ordered.